



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MAILED

RJH

OCT - 3 1995

Paper Number 23

**OFFICE OF DIRECTOR
GROUP 1800**

In re Application of:

Lynn Bergmeyer et al

Serial No. 08/062,021

Filed: May 14, 1993

For: DIAGNOSTIC COMPOSITIONS,

ELEMENTS, METHODS AND TEST KITS FOR

AMPLIFICATION AND DETECTION OF HUMAN CMV DNA

USING PRIMERS HAVING MATCHED MELTING TEMPERATURES

DECISION ON PETITION

This is a decision on the request, filed August 14, 1995, to resend the examiner's answer and restart the period for response thereto. Note, the request is being treated as a petition under 37 CFR 1.181.

On September 16, 1994, appellants filed an appeal brief in response to the final rejection of March 21, 1994. On December 1, 1994, appellants filed an associate power of attorney and change of address. On December 16, 1994, an examiner's answer was mailed which included new grounds of rejection on many of the pending claims. The examiner's answer gave appellants a time period of two months from the December 16, 1994 mailing date in which to respond to the new grounds of rejection and indicated that failure to respond to such new grounds of rejection would result in dismissal of the appeal of the claims so rejected. To date, appellants have not responded to the new grounds of rejection in the examiner's answer.


Petitioner asserts that in spite of the associate power of attorney and change of address filed December 1, 1994, the examiner's answer of December 16, 1994 was mailed to the correspondence address that was of record prior to the change of address. Petitioner asserts that the examiner's answer was not received at the proper address until it was forwarded thereto by Eastman Kodak Co. Furthermore, petitioner asserts that the examiner was contacted on January 19, 1995 and it was agreed that the examiner's answer would be resent. However, petitioner asserts that despite this conversation and follow-up telephone calls on various dates, the remailed examiner's answer has still not been received. Therefore, petitioner concludes that the examiner's answer should be resent and the period for response thereto restarted.

A review of the Office records indicates that the examiner's answer was, in fact, resent on February 23, 1995 and the two month time period for response thereto restarted to run from that date. See the attached copies of the Interview Summary Record for January 19, 1995 and the first page of the examiner's answer. Consequently, it is clear that the original request was granted and completed and since no response has been filed, the official status of the

application is that the appeal has been dismissed with respect to all claims rejected under a new grounds of rejection in the examiner's answer. However, it is also apparent from the present petition that the remailed examiner's answer has not been received. Such a situation appears to be most appropriately covered by 1156 O.G. 53 (copy attached) but since the present petition fails to include the appropriate evidence in support of an allegation of failure to receive the remailed examiner's answer, the petition cannot be granted. Accordingly, the petition is hereby DISMISSED.

It is suggested that petitioner file a renewed petition under 37 CFR 1.181 with the appropriate proofs under 1156 O.G. 53. Such a renewed petition should be filed within two months from the date of this decision.

PETITION DISMISSED.


John J. Doll, Director
Patent Examining Group 1800
Biotechnology

Audley A. Ciamporcero, Jr.
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003